

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY *CJ* D.C.  
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UNITED STATES OF AMERICA,

Plaintiff,

THOMAS M. GOULD  
CLERK U.S. DISTRICT COURT  
WD OF TN MEMPHIS

v.

No. 02-20380-B/V

MICHAEL R. SMITH,

Defendant.

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**ORDER DENYING DEFENDANT'S MOTION FOR BAIL PENDING APPEAL**

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Before the Court is the appeal of an order entered by Magistrate Judge Diane K. Vescovo on July 25, 2005, denying the pro se motion of Defendant, Michael R. Smith, for bail pending resolution of his appeal. On July 28, 2004, the Defendant pleaded guilty to Count 5 of the second superseding indictment to a violation of 18 U.S.C. § 922(g). On November 30, 2004, Smith was sentenced to a term of imprisonment of 108 months. During the course of Smith's prosecution, he had been assigned elbow counsel to assist him and this counsel, Bruce Griffey, of the Shelby County Bar, was later appointed to represent Smith on his appeal. Although Smith is prohibited from filing pro se motions when he has counsel, the Defendant has disregarded directives from this Court, which has resulted in a denial of his pro se motions. Nonetheless, the Defendant has continued to file them with the Court. On August 8, 2005, Smith again filed a pro se motion asking that this Court reverse Judge Vescovo's July 25 ruling and grant him bond pending appeal.

The statute which applies to Defendant's request is 18 U.S.C. § 3143(b). That statute states that a person who has been found guilty of an offense and sentenced to a term of

imprisonment and has filed an appeal is to be detained unless the judicial officer finds:

- (A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under Section 3142(b) or (c) of this title; and
- (B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in -
  - (i) reversal,
  - (ii) an order for a new trial,
  - (iii) a sentence that does not include a term of imprisonment, or
  - (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

18 U.S.C. § 3143(b).

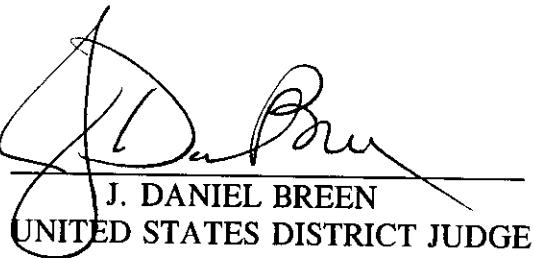
Smith presents nothing in his motion to indicate why the Court might find that he was not a danger to the community or flight risk or that his appeal might result in a reduced sentence. In his pro se filing of July 14, 2005, entitled, "Reason Why I Need a Bond" the Defendant listed several reasons including the fact that he has a wife and children, and that he has family members in Memphis and has had no violence or drug charges on his record. In addition, he states that he had made a substantial bond in State Court for the same charges and that he would abide by whatever restrictions the Court would place on him. This Court, when serving as a magistrate judge, had previously determined in a ruling on October 21, 2002, that the Defendant should be held without bond because no condition or combination of conditions would assure his appearance at trial or the safety of any other person or the community. That ruling was reaffirmed on August 25, 2003, by the district court.

As to his present request, the Defendant has presented no new or additional evidence which would cause this judge, now as a district judge, to reverse either his own ruling or that of

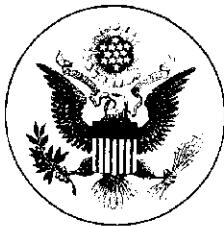
another magistrate judge who has determined that Defendant should not be released pending appeal.

Accordingly, based upon a de novo review of the magistrate judge's determination, the undersigned AFFIRMS the magistrate's order of July 25, 2005 and DENIES Defendant's request for a bond pending the resolution of appeal.

**IT IS SO ORDERED** this 18<sup>th</sup> day of August, 2005.



J. DANIEL BREEN  
UNITED STATES DISTRICT JUDGE



# Notice of Distribution

This notice confirms a copy of the document docketed as number 325 in case 2:02-CR-20380 was distributed by fax, mail, or direct printing on August 22, 2005 to the parties listed.

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